

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JUDYTH H. GLORE
Claimant

VS.

OVERLAND PARK REGIONAL MEDICAL CENTER
Respondent
Self-Insured

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Docket No. 220,240

ORDER

Respondent appealed the November 18, 1997 preliminary hearing Order entered by Administrative Law Judge Julie A. N. Sample.

ISSUES

The Administrative Law Judge granted claimant's post-award medical treatment request. Respondent questions whether claimant's current need for medical treatment is related to her work injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

Claimant originally filed an Application for Hearing on February 10, 1997, alleging she injured her low back, left leg, and left foot while working for the respondent as a surgical nurse on May 27, 1995. Respondent furnished claimant with medical treatment for her injuries, first with orthopedic surgeon Mark S. Humphrey, M.D., of Associated Orthopedics of Overland Park, Kansas.

Claimant saw Dr. Humphrey on May 31, 1995, with complaints of pain in her low back and some left leg pain radiating down to her foot. Dr. Humphrey's impression was degenerative arthritis of the L4-5 facets and radicular left leg pain and paresthesias. Claimant underwent an MRI examination which showed moderately severe spinal stenosis at two levels without evidence of a ruptured disc. Claimant was returned to light duty on June 26, 1995. Dr. Humphrey provided claimant with conservative medical treatment in the form of medication, physical therapy, and epidural steroid injections. Because of claimant's continuing low back complaints, Dr. Humphrey referred claimant to an orthopedic spine specialist, Jeffrey T. MacMillan, M.D.

Claimant was seen by Dr. MacMillan on January 15, 1996, with continuing complaints of dull aching low back pain and numbness in her left foot extending into her great toe. Dr. MacMillan continued a conservative treatment protocol for claimant. Although claimant continued to be symptomatic, Dr. MacMillan determined her symptoms did not warrant surgical intervention. The doctor concluded on June 3, 1996, that claimant had met maximal medical improvement. He assessed a seven percent whole body permanent functional impairment as a result of her work-related accident. The permanent functional impairment rating was attributed to both claimant's low back and her left lower extremity. The seven percent rating was determined by reducing the rating by preexisting conditions in both claimant's low back and left lower extremity.

Based on Dr. MacMillan's June 3, 1996, medical report, claimant settled her workers compensation claim with respondent in a settlement hearing held on February 13, 1997, before a Special Administrative Law Judge. The settlement was for work-related injuries to claimant's low back, left leg, and left foot. Claimant received a lump sum amount of \$9,266.25 which represented approximately a seven percent permanent partial general disability based on Dr. MacMillan's seven percent whole body functional impairment rating. All other issues were settled by claimant except the issue of future medical treatment was left open for one year or until February 13, 1998.

Because of claimant's continued left foot pain, she filed this post-award application for preliminary hearing requesting medical treatment for her left foot problems. Respondent referred claimant to a foot specialist, orthopedic surgeon John W. Fanning, M.D., for an evaluation of her foot problems. Dr. Fanning examined claimant on April 3, 1997. In a report dated May 22, 1997, the doctor related claimant's left foot problems to her May 27, 1995, work-related injury. The doctor recommended a bone scan with the possibility of reconstruction surgery. However, in the report dated November 11, 1997, Dr. Fanning, after examining claimant's EMG and nerve conductive studies completed December 1, 1995, changed his opinion. In that report, the doctor opined that claimant's current left foot problems were not related to her May 27, 1995, low back injury.

Respondent also sent claimant to be re-evaluated by her treating physician, Dr. MacMillan, on August 1, 1997. Dr. MacMillan had not seen the claimant since he had released and rated her on June 3, 1996. In a report dated August 1, 1997, claimant gave

Dr. MacMillan a history of working full time for the respondent since her last office visit of June 3, 1996. Claimant reported increased pain in her left midfoot as well as some increased low back pain since early 1997. However, claimant denied left lower extremity radicular pain, numbness, and paresthesia. Furthermore, claimant reported the numbness in her left foot had gradually improved. Dr. MacMillan concluded that claimant's mild increase in her low back pain was not functionally limiting. The doctor did recommend that treatment should be directed to the posterior tibial tendon rupture and the ongoing collapse of claimant's left foot. However, Dr. MacMillan opined that claimant's current left foot symptoms "do not appear related to her previous symptoms of spinal stenosis".

Since this post-award medical treatment request was brought pursuant to the preliminary hearing statute found at K.S.A. 44-534a, as amended, the first question that has to be answered is whether the Appeals Board has jurisdiction to review the preliminary hearing order. K.S.A. 44-534a gives the Administrative Law Judge authority to grant or deny temporary total disability and medical compensation pending a full hearing on the claim. The Appeals Board does not have jurisdiction to review a preliminary hearing order unless one of the issues listed in K.S.A. 44-534a, as amended, is raised by a party. In this case, the respondent has raised the issue of whether claimant's current need for medical treatment is related to her work injury. The respondent admitted at the settlement hearing that claimant suffered a work-related low back injury on May 27, 1995. The low back injury also was the cause of left lower extremity radiculopathy extending into claimant's left foot. Nevertheless, respondent argues the evidence contained in the preliminary hearing record does not prove that claimant's current need for medical treatment for her left foot condition is related to her May 27, 1995, work injury. The Appeals Board finds that the issue raised by the respondent is one of the issues listed in K.S.A. 44-534a, as amended, that grants the Appeals Board jurisdiction to review a preliminary hearing order.

The preliminary hearing transcript does not contain the testimony of the claimant. The transcript contains the arguments of the attorneys, medical records, and the transcript of the settlement dated February 13, 1997, admitted as exhibits.

The Administrative Law Judge noted the discrepancy between Dr. Fanning's two opinions on whether claimant's current need for medical treatment for her left foot condition was related to her May 27, 1995, work injury. However she went on to find "[i]n spite of this discrepancy, the court is inclined to order the requested medical treatment". The Appeals Board disagrees with the Administrative Law Judge's Order and finds, based on the current preliminary hearing record, that claimant failed to prove there is a causal relationship between her May 25, 1997, work-related low back injury and her current need for medical treatment for her left foot condition. The Appeals Board finds this conclusion is supported by the medical opinions contained in the preliminary hearing record of both Dr. Fanning and Dr. MacMillan.

The Administrative Law Judge also ordered respondent to pay claimant a reasonable attorney fee in the amount of \$445 for services rendered in this matter pursuant to K.S.A. 44-536(g). Neither party appealed this order and therefore the order is affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated November 18, 1997, entered by Administrative Law Judge Julie A. N. Sample is reversed in regard to the order granting claimant medical treatment for her current left foot condition and is affirmed in regard to the order granting claimant a reasonable attorney fee.

IT IS SO ORDERED.

Dated this ____ day of January 1998.

BOARD MEMBER

c: James R. Shetlar, Overland Park, Kansas
Jeffrey S. Austin, Overland Park, Kansas
Julie A. N. Sample, Administrative Law Judge
Philip S. Harness, Director